

# **EXHIBIT A**

Price, David 8/31/2006

FOR THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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TEXTRON INNOVATIONS, INC.,

Plaintiff,

-vs-

C.A. No. 05-486

THE TORO COMPANY,

Defendant.  
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Video examination of DAVID PRICE, taken at  
the instance of the Defendant, under and pursuant to the  
Federal Rules of Civil Procedure, before MELISSA J.  
STARK, a Certified Realtime Reporter, Registered  
Professional Reporter and Notary Public in and for the  
State of Wisconsin, at Michael, Best & Friedrich, LLP,  
  
100 East Wisconsin Avenue, Milwaukee, Wisconsin, on  
  
AUGUST 31, 2006, commencing at 8:59 a.m. and concluding  
  
at 4:53 p.m.

Pro-Systems Court Reporting

612.823.2100

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<p>1 APPEARANCES</p> <p>2 HUNTON &amp; WILLIAMS, by</p> <p>3 MR. CHRISTOPHER C. CAMPBELL,</p> <p>4 1751 Pinnacle Drive, Suite 1700,</p> <p>5 McLean, Virginia 22102,</p> <p>6 appeared on behalf of the Plaintiff.</p> <p>7 MERCHANT &amp; GOULD, by</p> <p>8 MR. ANTHONY R. ZEULI and MR. THOMAS J. LEACH,</p> <p>9 3200 IDS Center</p> <p>10 80 South Eighth Street,</p> <p>11 Minneapolis, Minnesota 55402-2215,</p> <p>12 appeared on behalf of the Defendant.</p> <p>13 ALSO PRESENT</p> <p>14 Mr. Dean VanHoogen, Videographer.</p> <p>15 *****</p> <p>16 INDEX</p> <p>17 Examination By: Page</p> <p>18 Mr. Zeuli..... 5</p> <p>19 Mr. Campbell..... 216</p> <p>20 Mr. Zeuli..... 255</p> <p>21 Exhibits: ID</p> <p>22 DDX-1 -Notice Of Deposition..... 5</p> <p>23 DDX-2 -Patent Number 6,047,530..... 10</p> <p>24 DDX-3 -Patent Number 6,336,311..... 11</p> <p>25 DDX-4 -Patent Number 6,336,312..... 11</p> <p>26 DDX-5 -Plaintiff Textron's Brief In Support Of</p> <p>27 Its Proposed Claim Construction..... 18</p> <p>28 DDX-6 -Pages From Webster's Dictionary..... 23</p> <p>29 DDX-7 -Piece Of Cited Prior Art In The 530 Patent. 26</p> <p>30 DDX-8 -Toro Brochure For A Groundsmaster 455-D.... 30</p> <p>31 DDX-9 -Patent Number 5,280,695..... 34</p> <p>32 DDX-10-Toro Brochure For A Groundsmaster 580-D.... 41</p> <p>33 DDX-11-Jacobsen Manual For The HR-15..... 45</p> <p>34 DDX-12-Three Photographs..... 47</p>	<p>1 TRANSCRIPT OF PROCEEDINGS</p> <p>2 (Exhibit Nos. DDX-1 through DDX-5</p> <p>3 were marked.)</p> <p>4 THE VIDEOGRAPHER: We are officially</p> <p>5 on the record at 8:59 a.m. The date today is</p> <p>6 August 31st, 2006. This is tape number one of the</p> <p>7 deposition of David Price. This is being taken in</p> <p>8 the matter of Textron Innovations, Incorporated,</p> <p>9 versus The Toro Company. This is pending in the</p> <p>10 United States District Court for the District of</p> <p>11 Delaware, Case No. 05-486. The deposition is</p> <p>12 taking place at the offices of Michael, Best &amp;</p> <p>13 Friedrich, located at 100 East Wisconsin Avenue,</p> <p>14 Milwaukee, Wisconsin.</p> <p>15 My name is Dean VanHoogen, videographer</p> <p>16 on behalf of Pro-Systems Court Reporting, and the</p> <p>17 court reporter is Melissa Stark. Will counsel</p> <p>18 please state their appearances and whom they</p> <p>19 represent, beginning with plaintiff's counsel, and</p> <p>20 then the reporter will swear in the witness.</p> <p>21 MR. CAMPBELL: Christopher C. Campbell</p> <p>22 for Textron Innovations, Inc., and David Price.</p> <p>23 MR. ZEULI: Tony Zeuli for The Toro</p> <p>24 Company and with me today is Tom Leach.</p> <p>25 DAVID PRICE, called as a witness herein,</p>
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<p>1 INDEX CONT'D</p> <p>2 DDX-13-Patent Number 3,236,034..... 49</p> <p>3 DDX-14-Brochure By Risboro Turf Entitled R.T.S.</p> <p>4 Rotary Cutters..... 50</p> <p>5 DDX-15-Nunes Brochure..... 52</p> <p>6 DDX-16-1991 Nunes Brochure..... 53</p> <p>7 DDX-17-Grasscare Major Brochure..... 54</p> <p>8 DDX-18-Brochure And Web Page Printout Regarding</p> <p>9 The Groundsmajor Roller mower..... 56</p> <p>10 DDX-19-1993 Nunes Brochure..... 59</p> <p>11 DDX-20-Nunes Brochure..... 60</p> <p>12 DDX-21-Photograph Of A Mower..... 61</p> <p>13 DDX-22-File History Copy Of The 530 Patent..... 66</p> <p>14 DDX-23-Turf Management For Golf Courses..... 80</p> <p>15 DDX-24-1993 Document From Turf Management..... 87</p> <p>16 DDX-25-Article Called "Cheap And Careful"..... 92</p> <p>17 DDX-26-Article Entitled "Rotaries Take To Golf</p> <p>18 Courses"..... 97</p> <p>19 DDX-27-Patent Number 5,305,589..... 107</p> <p>20 DDX-28-Patent Number 5,890,354..... 109</p> <p>21 DDX-29-CFR Regulations For Patents..... 109</p> <p>22 DDX-30-Privileged Log..... 151</p> <p>23 DDX-31-Two-Page IDS Form..... 182</p> <p>24 PDS-1 Form PTO 1449..... 217</p> <p>25 (Original Exhibits DDX-1 Through DDX-31</p> <p>And PDS-1 Were Attached To The Original</p> <p>Transcript.)</p>	<p>1 having been first duly sworn on oath, was examined</p> <p>2 and testified as follows:</p> <p>3 EXAMINATION</p> <p>4 BY MR. ZEULI:</p> <p>5 Q Good morning, Mr. Price.</p> <p>6 A Good morning.</p> <p>7 Q I've put in front of you Deposition Exhibit No. 1.</p> <p>8 It's the notice of your deposition today. Do you</p> <p>9 see that?</p> <p>10 A I do.</p> <p>11 Q You're here voluntarily, correct; in other words,</p> <p>12 not under a subpoena?</p> <p>13 A That's correct.</p> <p>14 Q When did you become represented by Mr. Campbell</p> <p>15 and his firm Hunton &amp; Williams?</p> <p>16 A I don't technically know the answer to that. I</p> <p>17 guess it would be sometime within the last few</p> <p>18 weeks.</p> <p>19 Q But you are represented by Mr. Campbell today?</p> <p>20 A Yes.</p> <p>21 Q Can you tell me whether you are planning to</p> <p>22 testify in the trial in this matter if it goes to</p> <p>23 trial?</p> <p>24 A I haven't spoken to anybody about that.</p> <p>25 Q Because there may be issues concerning subpoenas</p>

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<p>1 issue.</p> <p>2 Q So your basis for your high degree of certainty</p> <p>3 that you didn't have DDX-26, "Rotaries Take to</p> <p>4 Golf Courses," is based on the fact that if you'd</p> <p>5 had it, you would have cited it, correct?</p> <p>6 A That and the fact that I don't remember it, and</p> <p>7 I'm pretty sure I didn't see it.</p> <p>8 Q All right. Anything else that you're relying on</p> <p>9 for your high degree of certainty that you did not</p> <p>10 have that article, "Rotaries Take to Golf</p> <p>11 Courses," other than what you just mentioned?</p> <p>12 MR. CAMPBELL: Objection. Form.</p> <p>13 THE WITNESS: Nothing I can think of.</p> <p>14 I'm making some assumption I'm not even conscious</p> <p>15 of, but I think those are the main reasons.</p> <p>16 BY MR. ZEULI:</p> <p>17 Q If that ever changes, let Mr. Campbell know and</p> <p>18 let me know, if you would.</p> <p>19 MR. CAMPBELL: Is that a question?</p> <p>20 MR. ZEULI: No, a request.</p> <p>21 MR. CAMPBELL: I'd like it stricken from</p> <p>22 the record. We're here to ask questions, not</p> <p>23 requests of the witness.</p> <p>24 (Exhibit No. DDX-27 was marked.)</p> <p>25 BY MR. ZEULI:</p>	<p>1 Q And it is describing, is it not, using rotary</p> <p>2 mowers to cut golf course roughs?</p> <p>3 MR. CAMPBELL: Objection. Form.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MR. ZEULI:</p> <p>6 Q And if you had had this, would you have considered</p> <p>7 this possibly relevant to the 530 patent</p> <p>8 application?</p> <p>9 A We certainly would have cited it.</p> <p>10 Q And it wasn't cited to the patent office in the</p> <p>11 530 patent, correct?</p> <p>12 A I don't know.</p> <p>13 Q Okay. Can you just check? It's Exhibit 2, I</p> <p>14 believe, Mr. Price, the 530 patent.</p> <p>15 A Anybody got it handy? Mine are all shuffled.</p> <p>16 Q There you go.</p> <p>17 A There it is. It doesn't appear on the list of</p> <p>18 references cited.</p> <p>19 Q Okay.</p> <p>20 A The patent office makes mistakes sometimes, but</p> <p>21 that probably means it wasn't cited.</p> <p>22 Q Okay. And you don't recall having the 589 patent</p> <p>23 during the prosecution of the 530 patent, correct?</p> <p>24 A Correct.</p> <p>25 Q Okay. And the only way that you can be certain</p>
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<p>1 Q I'm handing to you what's been marked as DDX-27.</p> <p>2 It's a U.S. patent 5,305,589 to Rodriguez. Do you</p> <p>3 recognize this document?</p> <p>4 A No.</p> <p>5 Q Turn, if you would, to the first column, column</p> <p>6 number one, paragraph number two under description</p> <p>7 of related art. That paragraph, and I'll just</p> <p>8 read it, says, "The conventional lawn tractor,</p> <p>9 garden tractor or commercial mowing tractor has a</p> <p>10 plurality of rotary cutting blades typically</p> <p>11 numbering from two to five, although larger</p> <p>12 commercial models may include many more. They are</p> <p>13 also used to mow a variety of types of grasses</p> <p>14 under a variety of conditions: household lawns,</p> <p>15 landscaping lawns adjacent public and corporate</p> <p>16 buildings, golf course fairways and roughs, fields</p> <p>17 and weeds along roadways to name a few," end</p> <p>18 quote. Did I read that in right?</p> <p>19 A I believe so.</p> <p>20 Q This is a document that's dated April 26, 1994,</p> <p>21 correct?</p> <p>22 A That's the date of the patent.</p> <p>23 Q And that's the date it would have been publicly</p> <p>24 available, correct?</p> <p>25 A Yes.</p>	<p>1 that you didn't have the 589 patent again is</p> <p>2 because you didn't cite it, correct?</p> <p>3 A Oh, same thing again, in that effect I don't</p> <p>4 remember it, I strongly believe I didn't have it;</p> <p>5 and if we'd had it, we would have cited it.</p> <p>6 (Exhibit No. DDX-28 was marked.)</p> <p>7 BY MR. ZEULI:</p> <p>8 Q I'm going to hand to you what's been marked as</p> <p>9 DDX-28. Do you recognize that document?</p> <p>10 A Well, it looks familiar. I see the firm's name is</p> <p>11 on it.</p> <p>12 Q DDX-28 is patent 5,890,354, correct?</p> <p>13 A Yes.</p> <p>14 Q And it's to Mr. Bednar, the same inventor as the</p> <p>15 530 patent, correct?</p> <p>16 A Yes.</p> <p>17 Q It was filed on January 22, that being the 354</p> <p>18 patent, January 22 of 1997, just a couple days</p> <p>19 before the 530 patent application was filed,</p> <p>20 correct?</p> <p>21 A It was filed January 22, 1997. I don't remember</p> <p>22 exactly what the filing date of the 530 patent</p> <p>23 was.</p> <p>24 Q I'll represent it was February 3rd, 1997.</p> <p>25 A February 3rd.</p>

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<p>1 Q Did you work on this patent application, the 2 application that became the 5,890,354 patent? 3 A Yes. 4 Q Okay. And do you see that listed on the list of 5 documents that were part of the file history of 6 the 354 patent is U.S. 5,305,589 to Rodriguez? 7 A Yes. 8 Q So with respect to the Rodriguez patent, you had 9 the Rodriguez patent during the prosecution of the 10 530 patent application; isn't that correct? 11 A It doesn't necessarily mean I ever saw it. It 12 means that it's on the front of the patent as 13 having been cited, which is again probably true. 14 I don't know when it was cited, assuming it was 15 cited, and it doesn't mean that -- I don't know 16 who cited it and if it was cited by the patent 17 office, I don't know that I ever got a copy of it. 18 Q Are you telling me that -- well, if there was an 19 IDS that bears your signature or Mr. Fieldhack's, 20 then we can assume that you had the 589 patent, 21 correct? 22 A Well, you can assume it was in our possession, 23 yeah. 24 Q And at some time you would have had the file 25 history of the 354 patent, which would have</p>	<p>1 being certain that you didn't have a reference in 2 the 530 patent because you didn't submit it would 3 be incorrect, correct? 4 A No, because what -- if we saw this patent in 5 connection with the 354 application, that doesn't 6 mean we had any understanding that it had any 7 relevance whatsoever with respect to the 530 8 patent. They're directed towards different 9 inventions, and you can have a reference in one 10 file and only be looking at a small part of it 11 because of its relevance to that file and not 12 appreciate its relevance to another matter. 13 Q Earlier you testified that with respect to prior 14 art that you're aware of, you always cite anything 15 that's possibly relevant, correct? 16 A Anything that we have with respect to that file. 17 Q And when we were talking about the Rodriguez 18 patent, DDX-27, you said you would have submitted 19 that into the 530 patent application, correct? 20 A If it had been connected in any way with that 21 patent application, but its mere existence in 22 another file doesn't make that connection, and it 23 could be in that other file and we'd have no idea 24 it had any relevance whatsoever to the 530 patent. 25 Q You know, the -- I believe you -- I believe your</p>
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<p>1 included the 589 patent, correct? 2 MR. CAMPBELL: Objection. Form. 3 THE WITNESS: Well, again, I don't know 4 if a copy of that patent was ever in our file. 5 BY MR. ZEULI: 6 Q If the examiner cited the 589 reference, you would 7 have eventually received a copy of it, correct? 8 A Not necessarily. 9 Q Okay. Do you still have the 354 file? 10 A No. 11 Q That was also transferred? 12 A Yes. 13 Q Now, if the file history shows that the 589 patent 14 was submitted in IDS by you or your firm, this 15 would be an instance where your knowledge of a 16 piece of relevant prior art was not cited in the 17 530 patent, correct? 18 MR. CAMPBELL: Objection. Form. 19 THE WITNESS: Well, I don't know what 20 you mean by "a piece of relevant prior art." This 21 patent wasn't cited apparently in the 530 patent. 22 BY MR. ZEULI: 23 Q And again, assuming that the file history of the 24 354 shows that you had a copy of the 589 patent, 25 this would be a situation in which your basis for</p>	<p>1 testimony was that if you had known of the 2 Rodriguez patent, DDX-27, during the prosecution 3 of the 530 patent, that you would have cited it 4 and that the reason you knew that you didn't know 5 of it was because you didn't cite it? 6 A Implicit in that statement is know of it in 7 connection with the 530 patent. There's thousands 8 of patents I know about and I haven't cited 9 because I wasn't looking at them in connection 10 with the 530 patent. 11 Q So what is your criteria for determining of these 12 thousands of patents that you know which ones 13 you're going to cite to the patent office and 14 which ones you are not? 15 A Well, it's either ones I know have some relevance 16 with respect to the invention in question or ones 17 that are brought to my attention in connection 18 with that file, which is typically during a prior 19 art search or cited by the client. 20 Q In this instance you -- strike that. If the file 21 history of the 354 patent shows that you submitted 22 the 589 patent, that obviously shows that you were 23 aware of it, correct, because you submitted it? 24 A It means I knew it existed and I had looked at it 25 in connection with the 354 patent.</p>

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<p>1 Q And you said that with respect to the 589 patent, 2 you knew that you weren't aware of it because it 3 wasn't cited in the 530 patent application? 4 MR. CAMPBELL: Objection. Form. Asked 5 and answered. 6 THE WITNESS: Again, I was not aware of 7 it in connection or of its having any relevance 8 with respect to the 530 patent. Okay. Just like 9 I'm -- my statement didn't mean I wasn't aware of 10 every other U.S. patent I've ever seen in my 11 career. It means I wasn't aware of its relevance 12 in connection with the 530 patent. 13 BY MR. ZEULI: 14 Q And is that because you didn't study the 589 15 sufficient to know whether it was -- 16 A I had no idea if I ever saw the 589 patent. 17 Q But a moment ago you took a look at column one and 18 its reference to rotary cutting blades and cutting 19 golf course roughs and you said yes, that's 20 possibly relevant to the 530 and I would have 21 submitted it? 22 A I see that today. 23 Q So it just -- 24 A I'm quite sure I didn't see that language during 25 prosecution of the 530 patent.</p>	<p>1 how many patents you were prosecuting that 2 involved Mr. Bednar? 3 A I don't. 4 Q Okay. With respect to the 589 patent, DDX-27, the 5 Rodriguez reference, did Mr. Bednar provide that 6 to you? 7 A Provide what to me? 8 Q The Rodriguez reference. 9 A I don't know where the Rodriguez reference came 10 from. 11 Q Let's go back to the 530 patent, which is Exhibit 12 2. Let me direct your attention to the background 13 of the invention, column one, JA-0007. Would you 14 just take a minute, Mr. Price, and just read that 15 short paragraph. 16 A The entire background? 17 Q Yeah. Lines about one through 20. 18 A Okay. 19 Q Did you write lines one through 20 for the 20 background of the invention? 21 A I don't know what role I had in writing that. 22 Q Do you recall whether Mr. Fieldhack wrote all or a 23 portion of that background of the invention? 24 A I don't -- I don't know what role he played 25 either. I don't know who helped me write this</p>
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<p>1 Q Okay. If you knew of the 589 patent in connection 2 with work for Mr. Bednar, how is it that you 3 wouldn't have noticed what you've called, you 4 know, important information? 5 A Because it wasn't important in that context, in 6 the context of the 354 patent. References are in 7 files all the time and we don't read every single 8 word of them. We read the parts that are relevant 9 to the invention in question. Now, I'm saying to 10 you I didn't read that paragraph during 11 prosecution of the 530 or I would have made the 12 connection. 13 Q Do you think you should have read that paragraph 14 looking at it now -- 15 A No. 16 Q -- giving its statement about using rotary motors? 17 A No. Why would I do that? 18 Q Because the patent in the 530 talks on and on 19 about the lack of use of rotary mowers on a golf 20 course. 21 A But I don't read and I have no obligation to read 22 through every patent that I see to find out if 23 there's something in it that's relevant to some 24 other patent application I'm prosecuting. 25 Q During the '97 to 1999 time frame, do you recall</p>	<p>1 patent application. 2 Q Do you recall any input from Mr. Bednar into the 3 background of the invention section of the 530 4 patent? 5 A I don't specifically recall, but that's where we 6 likely would have gotten this information because 7 we don't know this. 8 Q And you've told me over and over and over today 9 that you're not one in the skill of the art with 10 lawn mowers, correct? 11 A Right. 12 Q And this background of the invention has a lot of 13 information about -- 14 A Yes. 15 Q So this really couldn't have come from you even if 16 you typed it up, correct? 17 A Correct. 18 Q How about Mr. Fieldhack, was he one skilled in the 19 art of lawn mowers? 20 A I don't think so. 21 Q All right. So it either came from Mr. Bednar or 22 some other source, correct? 23 A Yes. 24 Q Do you remember any other sources, other than 25 Mr. Bednar, who could have provided to you the</p>

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<p>1 MR. CAMPBELL: Objection. Form.</p> <p>2 BY MR. ZEULI:</p> <p>3 Q But then you're saying in the same vein if he had</p> <p>4 submitted this as prior art, it wouldn't</p> <p>5 invalidate the claims. How can that be?</p> <p>6 MR. CAMPBELL: Objection. Form.</p> <p>7 THE WITNESS: Well, there's at least two</p> <p>8 things. One, I don't know if the claims were the</p> <p>9 same at the time. I don't know -- secondly, he</p> <p>10 certainly could have been wrong about whether</p> <p>11 these infringed. Obviously he believed they did.</p> <p>12 BY MR. ZEULI:</p> <p>13 Q On the first point -- there's just a few pages</p> <p>14 left in the prosecution history. Would you just</p> <p>15 flip through it just to satisfy yourself that</p> <p>16 there were no further changes to the claims after</p> <p>17 Mr. Bednar's declaration?</p> <p>18 A Well, if that's true, then they're the same</p> <p>19 claims.</p> <p>20 Q I'll represent to you that they are.</p> <p>21 A But again, the fact that he believed that those</p> <p>22 devices infringed his claims doesn't necessarily</p> <p>23 make them invalidating prior art if they were</p> <p>24 prior art.</p> <p>25 Q Because he could have been wrong?</p>	<p>1 A Correct.</p> <p>2 Q -- form? You hadn't had any trouble with her with</p> <p>3 respect to IDSs, correct?</p> <p>4 A Right.</p> <p>5 Q Did you tell her not to use a 149?</p> <p>6 A I don't recall what we -- what anybody told her to</p> <p>7 do.</p> <p>8 Q It's 1449.</p> <p>9 A I don't think it mattered if a 1449 was used.</p> <p>10 Q It seemed to matter to the patent office, didn't</p> <p>11 it, JA-0176?</p> <p>12 A Again, this is the patent office being</p> <p>13 bureaucratic. They're saying you didn't submit a</p> <p>14 1449. Fine, that's true, but that doesn't make</p> <p>15 what we did incorrect.</p> <p>16 Q But --</p> <p>17 A In fact, it says, "Did not include the necessary</p> <p>18 petition or fee to have it considered." Well, we</p> <p>19 didn't expect to have it considered, and we said</p> <p>20 we believe it's cumulative to information already</p> <p>21 of record but we're filing it to assure compliance</p> <p>22 with their duty of candor. It's in the file. The</p> <p>23 public knows about it. We met our duty of candor.</p> <p>24 Q What was this cumulative to?</p> <p>25 A I certainly don't recall that at this point.</p>
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<p>1 A Yes, for one thing.</p> <p>2 Q And the patent office would have no way of knowing</p> <p>3 if he was wrong in his statements, correct?</p> <p>4 A True.</p> <p>5 Q Let's go to JA-0173. The fourth IDS submission,</p> <p>6 it attaches a Nunes brochure dated 1993, correct?</p> <p>7 A I'm trying to find a date.</p> <p>8 Q Lower left-hand corner.</p> <p>9 A That may say that.</p> <p>10 Q Anyway, it was submitted as prior art, correct?</p> <p>11 A Well, it was submitted.</p> <p>12 Q It was submitted incorrectly, wasn't it?</p> <p>13 A No, I can't say that.</p> <p>14 Q Well, isn't that what the patent office said,</p> <p>15 JA-0176, first paragraph?</p> <p>16 A No. It says that we didn't meet the requirements</p> <p>17 for having it considered by the examiner, but</p> <p>18 that's not incorrectly. That's exactly what we</p> <p>19 intended to do. We got it in the file. We met</p> <p>20 our duty of candor.</p> <p>21 Q Okay. The -- Ms. Stevens helped you file this,</p> <p>22 correct?</p> <p>23 A Yes.</p> <p>24 Q You testified earlier that she knew how to use a</p> <p>25 PTO 149 --</p>	<p>1 Q Because here you've got multiple single spindle</p> <p>2 decks, correct?</p> <p>3 MR. CAMPBELL: Objection. Form.</p> <p>4 THE WITNESS: Do we have to go through</p> <p>5 all of those definitions again? I can't tell</p> <p>6 what's in this. It's a terrible picture.</p> <p>7 BY MR. ZEULI:</p> <p>8 Q You know --</p> <p>9 A It says five deck. It says blades, so they said</p> <p>10 it had five decks. They say it has blades, but I</p> <p>11 can't tell what's in this thing.</p> <p>12 Q So let me just make sure I understand you</p> <p>13 correctly. You didn't want the patent office to</p> <p>14 examine the JA-0174?</p> <p>15 MR. CAMPBELL: Objection. Form.</p> <p>16 Mischaracterizes his testimony.</p> <p>17 THE WITNESS: I knew that they wouldn't</p> <p>18 examine it.</p> <p>19 BY MR. ZEULI:</p> <p>20 Q Because you didn't submit the 1449 form?</p> <p>21 A We didn't follow the procedures to get it -- and I</p> <p>22 don't know when this was. If it was after the</p> <p>23 case had been allowed or -- we might have had no</p> <p>24 choice but to withdraw it from issue to get it</p> <p>25 considered. We didn't feel that was necessary.</p>

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<p>1 We felt it was cumulative, but in order to meet  2 our duty of disclosure, we submitted it.  3 Q So in other words, in order to have the Nunes  4 brochure and JA-0174 considered by the patent  5 office, you would have had to withdraw the 530  6 application from its notice of allowability,  7 correct?  8 A That's my guess.  9 Q And you didn't want to do that, correct?  10 A That's correct.  11 Q And you can't recall what the Nunes rotary mower  12 was cumulative to; is that your testimony?  13 A That's correct.  14 Q All right.  15 A But at the time I believed it was cumulative, and  16 there's absolutely nothing wrong with what I did.  17 Q You believed it was cumulative, not Mr. Fieldhack?  18 A Actually, it says, "Applicant believes," but I bet  19 I believed that, too.  20 Q So you and Mr. Bednar?  21 A (Witness nods head.)  22 Q But you can't -- you can't tell me sitting here  23 today what it is you believe that's cumulative to?  24 A Well, I believe I said that to you twice already.  25 You're trying to make something out of nothing</p>	<p>1 Q And that's --  2 A In this case we didn't feel it was necessary.  3 Q And that's the heart of the nub. I'm trying to  4 figure out why you didn't feel it was necessary  5 and you've said because you thought it was  6 cumulative.  7 A That's exactly right.  8 Q I want to know what it's cumulative to because  9 frankly I don't see anything in the prior art  10 submitted in the 530 application that's anywhere  11 near as good as the Nunes brochure.  12 A That's your opinion. My opinion at the time was  13 it was cumulative.  14 Q But you can't recall with what?  15 A No, I don't recall the specific references.  16 Q It -- JA-0174 mentions page two of two, and any  17 idea what page one was?  18 A Where is page two of two?  19 Q Top right.  20 A That looks like it's page two of two of a fax.  21 This was probably faxed to me, and page one of two  22 was the cover sheet of the fax.  23 Q You don't know how long Mr. Bednar had this in his  24 possession before he provided it to you, do you?  25 A No.</p>
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<p>1 here. I did absolutely nothing wrong.  2 Q Well, why do you keep saying that, that you did  3 absolutely nothing wrong?  4 A Because that's what you're insinuating.  5 Q I'm not.  6 A I must be awfully stupid then.  7 Q The patent office said that you did not include  8 the necessary petition, necessary petition.  9 A In order to have it considered.  10 Q Yes.  11 A Again, I said we knew that when we filed it.  12 Q So you intentionally --  13 A We intentionally followed this procedure because  14 we did not want to withdraw it from issue, but we  15 wanted to get it in the file in order to comply  16 with our duty of disclosure. We did that.  17 There's no problem here.  18 Q Do you know where the Nunes brochure came from?  19 A I don't.  20 Q Do you know who gave it to you?  21 A No, I don't, but I would like to note that earlier  22 during the prosecution of this application we did  23 effectively withdraw it from issue in order to get  24 the Mountfield brochure before the examiner, so  25 we -- in that case we felt that was necessary.</p>	<p>1 MR. ZEULI: Why don't we take a short  2 break, see what I have left and we'll wrap it up.  3 THE VIDEOGRAPHER: We are off the record  4 at 3:44 p.m.  5 (Recess taken.)  6 THE VIDEOGRAPHER: We are back on the  7 record at 3:56 p.m.  8 BY MR. ZEULI:  9 Q Mr. Price, I'd like you to tell me the substance  10 of the conversations that you've had with the  11 lawyers from Hunton &amp; Williams about this case.  12 MR. CAMPBELL: The witness is instructed  13 not to answer the question.  14 MR. ZEULI: Do you abide by --  15 THE WITNESS: I will follow that  16 instruction.  17 MR. ZEULI: Now, what privilege are you  18 relying on, the one between Hunton and Mr. Price  19 as your client or the one between Hunton and  20 Textron?  21 MR. CAMPBELL: There are two privileges.  22 I represent Mr. Price individually as well as the  23 law firm of Michael, Best &amp; Friedrich pursuant to  24 the agreement I have with the general counsel of  25 this law firm, and I represent Textron</p>

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